IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

1. Asstt.Comm.,Spl. Circle, Commercial Taxes, Kota
Vs.
M/s. Kota Zila Dugdh Utpadak Sah. Sangh Ltd., Kota.

(S.B. Sales Tax Revision No.188/2005)

2. Asstt.Comm. ,Spl. Circle, Commercial Taxes, Kota
Vs.
M/s. Kota Zila Dugdh Utpadak Sah. Sangh Ltd., Kota.

(S.B. Sales Tax Revision No.189/2005)

3. Asstt.Comm.,Spl. Circle, Commercial Taxes, Kota
Vs.
M/s. Kota Zila Dugdh Utpadak Sah. Sangh Ltd., Kota.

(S.B. Sales Tax Revision No.187/2005)

Date of Order ** April 17, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. M.Rafiq, Sr. Standing Counsel for the petitioner-Revenue.

BY THE COURT:

Learned counsel for the petitioner-revenue submits that the issue involved in these cases is covered by a decision of Division Bench of this Court in case of **M/s. Paschimi Raj. Dugdh Utpadak Sah. Sangh Ltd. Vs. State of Raj. and anr.** reported in 2003 (7) Tax Up-date 235, wherein this court has held that skimmed milk powder mixed with natural milk by the respondent-assessee or manufacturer of milk cannot be taxed at more than 4% rate of tax under Sec.10(3)

of the RST Act, 1994. The operative part of the said judgment is reproduced herein under:

> "Therefore, in a given case, even if the articles purchased by an assessee are not used as manufacture as raw materials but are used by him for processing the goods for sale, it cannot be subjected to tax exceeding 4% in view of sub-sec.(3) of Sec.10 of the Act, 1994.
>
> As it appears that the concessional rate of raw material under sub-sec.(1) has been notified at 4% and rate of tax U/s.4 in respect of goods in question being more than 4%, whether skimmed milk is taxed as a raw material or as an article used in processing of milk for sale, it would not result in altering the determination of liability vis-a-vis the assessee in question, in view of the fact that the skimmed milk is used for processing the natural milk for sale being not in dispute of any stage. As a matter of fact, it appears from the assessment order itself that skimmed milk is used for processing the milk for marketing.
>
> The conclusions is irresistible that the assessee is entitled to the concessional rate of tax, if not under sub-sec.(1) of Sec.10, under sub-sec. (3) of Sec.10 of the Act, 1994.
>
> We may make it clear that so far as use of skimmed milk powder for processing the natural milk to standardize its fat contents at different levels and selling the milk of varied forms at different price may not amount to manufacture, as even after the processing, the commodity commercially known for marketing remains the same viz. milk and the subject to tax has also been identified as one commodity viz. `milk' for tax also which is one of the relevant

> factor for determination whether a commercially distinct commodity will come into market by the dint of processing the natural milk to different fat contents; or invite different tax rates on different variety of milk so as to consider it commercially different commodity for the purposes of levy of tax also. At the same time, it cannot be doubted that the skimmed milk powder to the extent it is used for processing the milk to bring into existence other milk products like Ghee, Lassi about which reference has been made can be considered as raw materials. Merely because at intermediary stage of processing the product is sold in market with its different varieties though commercially not different commodity. Thus, the levy on the proportionate quantity of skimmed milk, to the extent it is used for the purpose of producing milk products with the help of other commodities can be considered as raw materials also.
>
> However, that difference in this case would not result in altering the tax liability. It is not necessary in this particular case to go into the further details of this question as to what extent the skimmed milk has been used as raw materials and to what extent the milk has been used as an article other than raw material for processing the milk for marketing.
>
> In view of the aforesaid discussion, this appeal succeeds and is allowed. The judgment under appeal is set aside. The writ petition is allowed. The assessment order is also set aside and the Assessing Officer is directed to make a fresh assessment order in accordance with law in the light of the aforesaid principles."

In view of this, there is no force in these revision

petitions. The same are consequently dismissed.

(Dr. VINEET KOTHARI),J.

VS/